

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Criminal Original Petition No.33138 of 2007 and
Miscellaneous Petition Nos.1 and 2 of 2007

1. Dr. R.Krishnamurthy
The Editor and Partner
Dinamalar Tamil Daily Newspaper,
219 Anna Salai, Chennai - 600 002
 2. Dr. R.Lakshmipathy
Publisher and Partner
Dinamalar Tamil Daily Newspaper,
219 Anna Salai, Chennai - 600 002
- ... Petitioners

-Vs.-

Sun TV Network Limited
Rep. by its Authorized Person, L.Jotheeswaran
367 & 369 Anna Salai,
Teynampet, Chennai - 600 018

... Respondent

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.7707 of 2007 pending on the file of the Metropolitan Magistrate Court XVII, Chennai and quash the complaint filed by the respondent.

For Petitioners : Mr. S.Elambharathi

For Respondent : Mr. P.S.Raman, senior counsel, for
M/s. B.K.Girish Neelakantan

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O R D E R

The above criminal original petition has been filed by the petitioners to quash all further proceedings in C.C.No.7707 of 2007 pending on the file of the XVII Metropolitan Magistrate Court, Chennai. On a complaint filed by the respondent herein under Section 200 of the Criminal Procedure Code for the alleged offence under Sections 500 and 501 of the Indian Penal Code, the learned Magistrate has issued process against the accused and being aggrieved by that the petitioners have filed the above petition.

2. The first petitioner is the Editor of the Daily Tamil Newspaper-Dinamalar and the second petitioner is its Publisher and they are also partners of the firm-Dinamalar. The respondent is a company incorporated under the Companies Act 1956. The alleged imputation complained of by the respondent is that a news item was published on 30.09.2007 in Dinamalar Daily wherein in the said news item certain statements were made and the said statements are perse defamatory and it was further alleged that the same was made with an intention to bring bad reputation to the complainant among the general public, subscribers and viewers of the complainant.

3. The petitioners seek to quash the said complaint contending that a corporation cannot complain of loss of reputation as the Corporation has no reputation apart from its property or trade; it cannot bring a prosecution for words which merely affect its honour or dignity; a reading of the averments in the complaint and the sworn statement shows that the complainant / respondent is complaining that the alleged statement in the news item has affected its honour and name whereas the name of the respondent was not at all mentioned in the statement, but only the name of 'Sun DTH' was mentioned and the alleged imputations published in the petitioners' newspaper is not against the complainant. It is the further contention of the petitioners that the complainant is not an aggrieved person and as such it cannot file the complaint.

4. When the above petition came up for admission on 06.11.2007, Mr.J.Ravindran learned counsel took notice on behalf of the respondent. As this Court was of a prima facie view that the quash petition could not be entertained at this stage, the learned counsel on either side were requested to make their submissions and accordingly elaborate submissions were made on either side. Mr.S.Elambharathi learned counsel for the petitioners reiterated the above said contentions put forth in the quash petition and elaborated the same.

5. The main thrust of the contention of the learned counsel for the petitioners is that the complainant / respondent herein has no locus standi to maintain the complaint. Learned counsel submitted that the company may maintain a prosecution or an action for a libel affecting its property, but not for a libel merely affecting personal reputation as a company has no reputation apart from its property or trade; the words complained of must reflect on the management of its business and must injuriously affect the company, as distinct from the individual who compose it; the alleged libel must attack the company in its method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position and it cannot bring a prosecution for words which merely affect its honour or dignity. Learned counsel further

submitted that the name of the complainant namely 'Sun TV Net Work Limited' is not mentioned as such in the impugned publication and on that ground also the complainant / respondent herein cannot be considered to be an aggrieved person.

6. According to the learned counsel for the petitioners there is no allegation in the complaint that the property of the company is affected. Learned counsel submitted that the impugned statement refers only to 'Sun DTH' which is a separate legal entity and 'Sun DTH' is not the complainant. In support of his above said contentions, the learned counsel relied upon the following decisions:-

(I) A.I.R. 1935 Rangoon 108 (Maung Chit v. Maung Tun), wherein it is observed as follows:-

"... A corporation may maintain a prosecution or an action for a libel affecting its property, but not for a libel merely affecting personal reputation as a corporation has no reputation apart from its property or trade. The words complained of must reflect on the management of its business and must injuriously affect the corporation, as distinct from the individuals who compose it. The alleged libel must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position. It cannot bring a prosecution for words which merely affect its honour or dignity. Moreover, it cannot maintain a prosecution for words which reflect, not upon it as a body, but upon its members individually, unless special damage has thereby been caused to it."

(II) AIR 1985 Bombay 229 (Indian Express Newspapers (Bom.) Pvt. Ltd. v. Jagmohan) wherein in paragraph 22 it is observed as follows:-

"22. It is well settled that a corporation cannot suffer damages in mind or body. But as held in Metropolitan Saloom Ombinus Co. Ltd. v. Hawkins (1859) 4 H & N 87 : South Helton Coal Co. v. North Eastern News Association Ltd. (1894) 1 Q.B. 133 : D.L. Caterers Ltd. v. D'Ajou (1945) K.B. 364 : Lewis v. Daily Telegraph Ltd. (1964) A.C. 234 and Selby Bridge Proprietors v. Sunday Telegraph (The Times Feb. 17, 1966) a trading corporation has a business reputation and can sue for defamation in respect of a publication calculated to injure its reputation in the way of its business. The position is succinctly stated in

Spencer Bower on Actionable Defamation at Pp.278-279:-

"It is obvious that 'reputation' in the sense in which alone it concerns the topic of defamation has relation to the particular person enjoying it. But it must not be forgotten that 'person' for this purpose includes an artificial person; that is to say, it includes both 'a body of persons' and a firm'. That a commercial 'body of persons' has a trading character and can sue in respect of a publication to injure that trading character is now clearly well established."

It may be that the innuendo or the imputation may be directed against an individual connected with the management of the commercial body of persons. But if it is of such nature as to not only defame the individual but also injure the trading character of the commercial body of persons, then both the individual as well as the commercial body will have a cause of action to sue for defamation."

(III) AIR 1925 Calcutta 1121 (Pratap Chandra Guha Roy V. Emperor) wherein in paragraph 17 it is observed as here-under:-

"17. The other questions raised apply equally to both the charges. The first question is whether the complainant was the person defamed or, in the words, whether he is a "person aggrieved" by the offence as contemplated under Section 198 of the Criminal Procedure Code, so as to entitle him to maintain the prosecution. This is what is stated in the petition of complaint: "That it appears therefore that in making the above charges Dr. Pratap Chandra Guha Roy has intended to harm the reputation of the police and other high officials of the British Government and the Government themselves. The allegations are being announced throughout the District and it is therefore necessary that their falsity should be proved in the most effective manner viz., by trial in Court of law, etc.'" The learned Standing Counsel relies on ex-planation 2 of Section 499, I.P.C., as giving the complaint the right to maintain the prosecution, That explanation runs as follow: "It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such," the contention seems to be that in this, case there was defamation of the police force, i.e., a "collection of persons as such." As far as I am aware those words in the explanation have not been

judicially dealt with in any reported case. In my opinion those words mean that a collection of persons as such may be collectively detained in the same manner as a "company." The general principles on which a company may be said to have been defamed would therefore apply equally to the case where it is alleged that a collection of persons as such has been detained. Those general principles were formulated by Chief Baron Pollock in 'Metropolitan Saloon Omnibus Co. v. Hawkins (1859) 4 H.&N.87, where he said: "It (a corporation) could not sue in respects of an imputation of murder or incest, or adultery, because it could not commit those crimes. Nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption, although the individuals composing, it may be." This was adopted in Mayor, (do., or Manchester v. Williams (1893) 1 Q.B. 94 where it was laid down that a corporation may sue for libel affecting property, not for one affecting personal reputation. Similarly, Lopez, L.J., said in South Hetton Coal Co. v. North Eastern News Association (1894) 1 Q.B. 133: "A corporation or company could not sue in respect of a charge of murder, or incest or adultery because it could not commit those crimes. Nor could it sue in respect of a charge of corruption or of an assault because a corporation cannot be guilty of corruption or of an assault although the individuals composing it may be." These observations are quite apposite to the question before us and in my opinion the police force as such cannot complain of any imputation as regards its personal reputation because it cannot be guilty of beastly {conduct, nor can the collective body be guilty of the offence of biting off the 'nipple of the breast of a woman or of biting the cheek of a woman. The matter may be tested in another way. Suppose somebody laid a complaint before a Magistrate in terms of the words of the charges in this case, would any Magistrate issue process against the police force as such or any member of the police force? I am sure no Magistrate, would. In my judgment, therefore, the charges fail on the ground that they refer to the personal conduct only of a collection of persons as such".

(IV) AIR 1969 Punjab & Hariyana 150 (P.K.O.H. Mills v. Tilak Chand) wherein in paragraphs 8 and 9 of the said decision certain passages from 'Winfield on Tort' and 'Salmond on the Law of Torts' have been extracted, which read as follows:-

"8. Law relating to the capacity of corporations to sue in tort is summed up in "Winfield on Tort" (Seventh Edition at page 80) in the following words:-

"A corporation can sue for torts committed against it, but there are certain torts which it is impossible to commit against a corporation. Such are assault and personal defamation. Thus, a corporation cannot sue for libel a person who charges it with bribery and corruption although the individual members of it might be able to do so, but if a libel or slander affects the management or its trade or business, then the corporation itself can sue; as where the workmen's cottages of a colliery company were falsely described in a newspaper as highly insanitary."

In "Salmond on Law of Torts" (fourteenth edition), the same subject is dealt with at pages 614-615 in these terms:-

"In general a corporation may sue for a tort (e.g., malicious presentation of a winding up petition) in the same way as an individual. The only qualifications are (i) the tort must not be of a kind which it is impossible to commit against a corporation e.g., assault or false imprisonment; (ii) in case of defamation, it must be shown that the defamatory matter is of such nature that its tendency is to cause actual damage to the corporation in respect of its property or business. Thus an action of libel will lie at the suit of a trading corporation charged with insolvency or with dishonest or incompetent management. But where there is no actual damage, nor any tendency to produce such damage, no action will lie at the suit for the corporation; the only persons who have any cause of action are the individual members or agents of the corporation who have been defamed. So it has been held that a municipal corporation cannot sue for libel charging it with corruption and bribery in the administration of municipal affairs."

9. We would have had to judge the capacity of the appellant to sue by applying the tests laid down in the above-quoted texts of authority if the appellants were a corporation in law. Unfortunately for the appellants, however, it is not even a legal person. It is a partnership firm. It is well known that a firm is merely a compendious artificial name adopted by its partners and is not itself a legal entity. Libel or slander of a partnership firm may indeed amount to defamation of its

partners. But then it is the partners who may in such an eventuality sue and not the firm".

(V) (2006) 2 M.L.J. (Crl.) 105 (P.Varadarajan v. G.K.Mani, M.L.A.) wherein in paragraph 18 it is observed as follows:-

"18. The imputations found in the article under challenge do not relate to the complainant or his political party, there is no allegation of the political activity of Dr. Anbumani Ramadoss in the aforesaid article. As there is no defamatory imputation levelled against the political party of the complainant and Dr. Anbumani Ramadoss, the complainant cannot claim that he falls squarely under the category of "some persons aggrieved" by the offence of defamation. PMK was not the target of attack in the article which is put to test. Therefore, the respondent/complainant who is the President of PMK has no locus standi to prefer the complaint for an offence under Section 500 of the Indian Penal Code".

(VI) AIR 1972 Supreme Court 2609 (G.Narasimhan v. T.V.Chokkappa) wherein in paragraphs 10 and 13 it is observed as follows:-

"10. A learned Single Judge of the High Court, who heard the said applications, rejected the said contention in the following words:

"The Dravida Kazhagam is an identifiable group. The complainant is a member of this Kazhagam. He was the Chairman of the Reception Committee in the conference. He is active member of the Dravida Kazhagam. He was one of those who piloted and sponsored the resolution. Certainly he is a person aggrieved within the meaning of Section 198 of the Criminal Procedure Code. The complaint by him is competent."

"11. ...

12. ...

13. On these contentions, the principal question for determination is whether the respondent could be said to be an aggrieved person entitled to maintain the complaint within the meaning of Section 198 of the Code. That section lays down that no Magistrate shall take cognizance of an offence falling inter alia under Chapter XXI of the Penal Code (that is, Sections 499 to 502) except upon a complaint made by some persons aggrieved of such offence. Section 198, thus, lays down an exception to the general rule that a complaint can be filed by anybody whether he

is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a Magistrate in cases of defamation. The section is mandatory, so that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal."

7. Countering the said submissions Mr. P.S.Raman, learned Additional Advocate General, appearing on behalf of Mr. J.Ravindran learned counsel for the respondent by referring to the following portion in the impugned news item which is the subject matter of the complaint namely,

"அதற்கான விளக்கங்கள் "

"சன் குழுமம். "குறைந்த விலைக்கு வழங்குகிறோம்" என்று பொது மக்களை குழப்புகின்றனர், சன் டி.டி.எச்., சாதனம் இலவசம் என்று கூறிவிட்டு. அதை வாங்க சென்றால் +1,500 செலுத்த வேண்டும் என்கின்றனர். நவீன தொழில்நுட்பம் என்ற பெயரில் மத்திய அரசின் விதிகளுக்குப் பறம்பாக தான் தோன்றித்தனமாக செயல்படுவதை எதிர்க்கிறோம். சன் டி.டி.எச்., இலவசம் என்ற பெயரில் 50 லட்சம் சந்தாதாரர்களை நேரடி கட்டுப்பாட்டுக்குள் கொண்டு வந்து எதிர்காலத்தில் யாருமே போட்டி இல்லாமல் செய்து அதிகபட்ச சந்தாவாக +500 ஆக ஆக்கி விடுவர். "

submitted that the words "rd; FGkk;" found in the above said extracted passage reveals only to the complainant / respondent herein and the other allegations contained therein are perse defamatory as it lowers the reputation of the respondent among the general public, subscribers and viewers of the respondent. Learned Additional Advocate General further submitted that in paragraph 8 of the complaint it is stated that one Mr.Manoharan called and informed about the publication in the Dinamalar Daily dated 30.09.2007 and he stated that after reading the publication he doubted whether to buy Sun DTH or not and also whether Sun Television Group of Companies followed all the rules and regulations made in this regard. According to the learned Additional Advocate General, the above said averments in the complaint indicate that impugned news item has affected the complainant's property and trade. Learned Additional Advocate General by relying upon explanation 2 to Section 499 of the Indian Penal Code submitted that in respect of defamatory imputations against a company, the complaint filed by the company is valid as the company is the aggrieved person. Learned Additional

Advocate General further submitted that at this stage it is not the function of this court to appreciate the evidence or scope and meaning of the statement contained in the impugned news item and further submitted that the Court has to read the complaint as a whole and find out whether the allegations disclosed constitute an offence under Section 499 of the Indian Penal Code triable by the Magistrate and when the Magistrate prima facie came to the conclusion that the allegations might come within the meaning of 'defamation' under Section 499 of the Indian Penal Code and had taken cognizance, this Court may not embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. Learned Additional Advocate General in support of his above said submissions relied upon the following decisions:-

(i) (1996) 6 Supreme Court Cases 263 (Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi) wherein in paragraphs 10 and 13 it is observed as follows:-

"10. Explanation 2 to the said decision envisages that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

11....

12.....

13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether

allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."

(ii) (2001) 6 Supreme Court Cases 30 (John Thomas v. Dr. K.Jagadeesan) wherein in paragraphs 11, 12 and 13 it is observed as follows:-

"11. It is not disputed that the complainant is the Director of K.J. Hospital. Explanation 2 in Section 499 IPC reads thus:

"Explanation 2 . - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such."

12 . In view of the said Explanation, it cannot be disputed that a publication containing defamatory imputations as against a company would escape from the purview of the offence of defamation. If the defamation pertains to an association of persons or a body corporate, who could be the complainant? This can be answered by reference to Section 199 of the Code. The first sub-section of that section alone is relevant in this context. It reads thus:

"199. Prosecution for defamation .- (1) No court shall take cognizance of an offence under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence."

13. The collocation of the words "by some persons aggrieved" definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging

itself in nefarious activities its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. If K.J. Hospital is a private limited company, it is too far-fetched to rule out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the Company. Hence the appellant cannot justifiably contend that the Director of K.J. Hospital would not fall within the wide purview of "some person aggrieved" as envisaged in Section 199(1) of the Code."

(iii) AIR 1972 Supreme Court 2609 (referred to supra) wherein in paragraph 14 it is observed as follows:-

"14. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations."

(iv) 1984 L.W. (Cr1.) 104 (K.R.Karalan v. M/s. Southern Roadways Ltd., wherein in paragraphs 3 and 5 it is observed as follows:-

"3. Alleging that the materials contained in the posters were perse defamatory and harmed the reputation of the complainant, Thiru Chandran, Additional Executive officer of the complainant Company, filed the two complaints in question.

4.

5. Therefore, it follows that everyone who belongs to the management of the group company can be termed an aggrieved person. The company, though a juridical entity, does not have a physical or

bodily existence in flesh and blood and, such, only the Directors or the Managerial staff or representatives of the company can institute action on behalf of the company. In this case, the clear averment in the complaint is that Thiru Chandran, Additional Executive Officer, who has filed the complaint has been duly authorised by the Management of the company to take appropriate legal action in regard to the subject matter of the complaints and connected legal matters. In the light of these factors, there is absolutely no scope for the petitioner to contend that the complaints have not been preferred by an aggrieved person and consequently, the complaints have been taken on file in violation of the provisions of S.199 (1) CrI.P.C."

8. I have carefully considered the above said submissions made by the learned counsel on either side, perused the materials available on record and the decisions relied upon by the learned counsel on either side.

9. A reading of the decision reported in A.I.R. 1935 Rangoon 108 (referred to supra) shows that the alleged libel must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position and it cannot bring a prosecution for words which merely affect its honour or dignity. The decision reported in AIR 1985 Bombay 229 (referred to supra) arose out of a suit filed by a company seeking a decree for injunction alleging infringement of copy-right. While considering the issues that arose for consideration in that suit it is observed that if the imputations are of such nature as to not only defame the individual, but also injure the trading character of the commercial body of persons, then both the individual as well as the commercial body will have a cause of action to sue for defamation. This decision in the considered view of this Court is not of any help to decide the issue that arises for consideration in the above petition. In the decision reported in AIR 1925 Calcutta 1121 (referred to supra) the decision reported in (1893) 1 Q.B. 94 has been referred to, wherein it has been laid down that a corporation may sue for libel affecting property, but not for one affecting personal reputation. The said decision is sought to be relied upon by the learned counsel for the petitioner, which in the considered view of this Court, is not applicable to the facts of this case. In the decision reported in AIR 1969 Punjab & Hariyana 150 (referred to supra) it has been held that a firm is merely a compendious artificial name adopted by its partners and is not itself a legal

entity. By holding so the Division Bench has held that libel or slander of a partnership firm may indeed amount to defamation of its partners, but then it is the partners who may in such an eventuality sue and not the firm. This decision also is of no help in deciding the issue that arises for consideration in the above petition. The decision reported in (2006) 2 M.L.J. (Cr1.) 105 (referred to supra) is not applicable to the facts of this case as the facts of that case are totally different. In the decision reported in AIR 1972 Supreme Court 2609 (referred to supra) after considering the provisions contained in Section 198 of the Criminal Procedure Code it has been held that the said Section lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a Magistrate in cases of defamation and in the said decision Explanation (2) to Section 499 of the Indian Penal Code has also been considered and after such consideration it has been held that in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Therefore, a case for defamation in respect of imputations made against a company can be filed but it has not been decided in that case as to who can file the complaint namely whether the company can file the complaint or its Directors alone can file the complaint. Therefore in the considered view of this Court the said decision is not helpful to decide the issue that arises for consideration in the above petition. In the decision reported in (1996) 6 Supreme Court Cases 263 (referred to supra) also the question as to whether a company can maintain a complaint by itself in respect of a defamatory statement made against it has not been decided and as such the said decision is also not helpful to decide the issue that arises for consideration in the above petition. In the decision reported in (2001) 6 Supreme Court Cases 30 (referred to supra) the issue that came up for consideration before the Honourable Apex Court is whether the Director of the company which has been defamed can maintain a complaint, while considering that issue the Apex Court has held as follows:-

"If a company is described as engaging itself in nefarious activities its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. If K.J. Hospital is a private limited company, it is too far-fetched to rule out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the Company. Hence the appellant cannot justifiably

contend that the Director of K.J. Hospital would not fall within the wide purview of "some person aggrieved" as envisaged in Section 199 (1) of the Code."

Here again though it has been held that the Director of a company can maintain a complaint in respect of a defamatory statement made against a company the issue as to whether the company can maintain a complaint for defamation in respect of a defamatory statement made against the company has not come up for consideration before the Apex Court. Therefore, this decision is also not helpful to decide the issue that arises for consideration in the above petition.

10. The decision reported in 1984 L.W. (Crl.) 104 (referred to supra), as rightly contended by the learned counsel for the petitioners, squarely applies to the facts of this case. In that case, alleging that the materials contained in the posters were per se defamatory and harmed the reputation of the complainant, Thiru Chandran, Additional Executive Officer of the complainant Company, filed the complaints stating that he has been duly authorised to file the complaint. A contention was put forth by the accused that the complaint filed by the company through its Authorised Representative is not maintainable. While considering the same, a Learned Judge of this Court has observed as under:-

"The company, though a juridical entity, does not have a physical or bodily existence in flesh and blood and, such, only the Directors or the Managerial staff or representatives of the company can institute action on behalf of the company. In this case, the clear averment in the complaint is that Thiru Chandran, Additional Executive Officer, who has filed the complaint has been duly authorised by the Management of the company to take appropriate legal action in regard to the subject matter of the complaints and connected legal matters. In the light of these factors, there is absolutely no scope for the petitioner to contend that the complaints have not been preferred by an aggrieved person and consequently, the complaints have been taken on file in violation of the provisions of S.199 (1) CrI.P.C."

11. The facts of the above said case are similar to the facts of the case on hand. Therefore, the ratio laid down in the said decision squarely applies to the case on hand, if that be so, the contention of the learned counsel for the petitioners that the company cannot maintain a complaint has to be rejected. Since the above said decision has been rendered by a Learned Judge of this

Court, I am bound to follow the same, whereas the decisions reported in A.I.R. 1935 Rangoon 108 (referred to supra) and AIR 1925 Calcutta 1121 (referred to supra) are having only a persuasive value and it cannot be considered that it is binding on me.

12. Therefore for the reasons stated above, in the considered view of this Court, the complaint filed by the respondent is maintainable.

13. The contention of the learned counsel for the petitioners that the company may maintain a prosecution or an action for a libel affecting its property, but not for a libel merely affecting personal reputation as a company has no reputation apart from its property or trade is concerned, this Court is of the considered view that since there are some allegations in paragraph 8 of the complaint it is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. At this stage this Court cannot embark upon weighing the evidence and come to the conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500 of the Indian Penal Code. As laid down in (1996) 6 Supreme Court Cases 263 (referred to supra) it is the settled legal proposition that a court has to read the complaint as a whole and find out whether the allegations disclosed constitute an offence under Section 499 of the Indian Penal Code triable with the Magistrate and the Magistrate, prima facie, has come to the conclusion that the allegations might come within the meaning of 'defamation' under Section 499 of the Indian Penal Code and had taken cognizance of, but these are the facts to be established at the trial. The case set up by the petitioners are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie this Court is of the considered view that, at this stage, it is not a case warranting quashing of the complaint filed before the Court below. The contention of the petitioners, that in the impugned publication there is no reference to the complainant, but there is a reference only to 'Sun DTH' is concerned, it is for the Court below to consider as to what meaning to be given to the words "சன் குழுமம்".

14. Therefore this Court is not inclined to express any opinion on this aspect of the matter, except to the limited extent of saying that the Court below had not acted wrongly in coming to the prima facie conclusion that the contents of the impugned publication appeared to contain defamatory material and therefore there was need to take the complaint on file and issue process to the accused. I am not going any further into this aspect of the matter because the door must be open for the petitioners to raise their contentions

before the trial court that the contents of the impugned publication is not perse defamatory and therefore they cannot be convicted for an offence of defamation.

15. For the above said reasons, the above criminal original petition fails and the same is dismissed. Consequently the connected MPs are closed.

Srk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

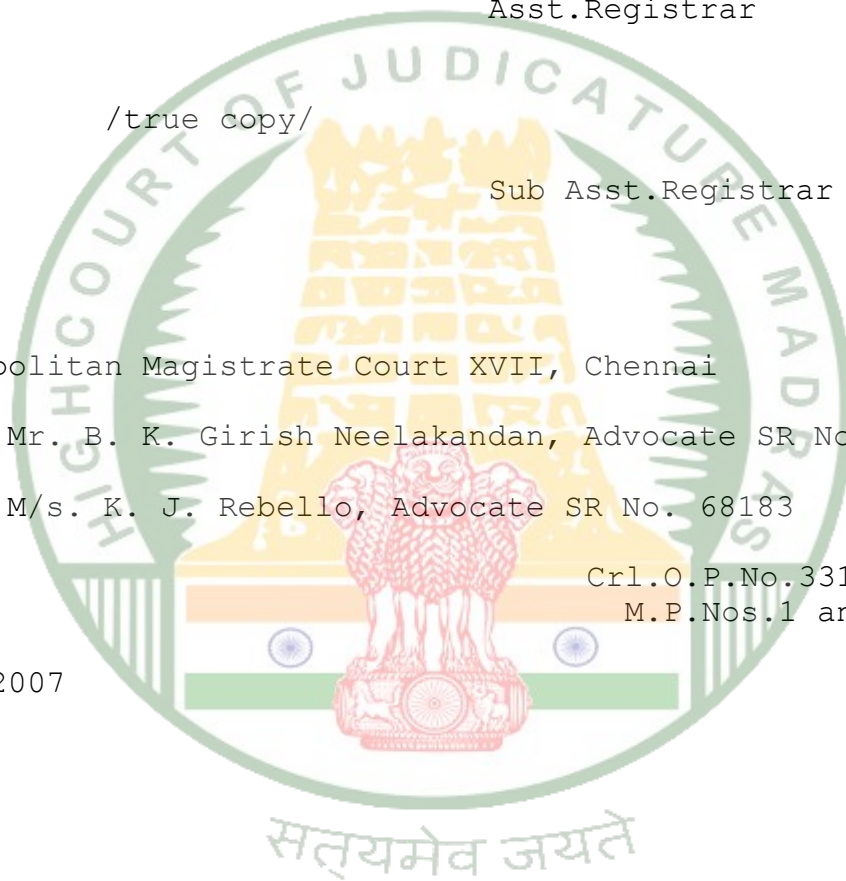
To

The Metropolitan Magistrate Court XVII, Chennai

- 1 cc to Mr. B. K. Girish Neelakandan, Advocate SR No. 68553
- 1 cc to M/s. K. J. Rebello, Advocate SR No. 68183

Crl.O.P.No.33138 of 2007 and
M.P.Nos.1 and 2 of 2007

AD(CO)
SR/21.11.2007



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